



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/165641

PRELIMINARY RECITALS

Pursuant to a petition filed April 27, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to a Child Care overpayment, a telephonic hearing was held on May 14, 2015.

The issue for determination is whether petitioner was overpaid in child care benefits (CCB).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Keisha Love

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received child care benefits for her child while she was working from at least April 6, 2014 through October 31, 2014.

3. From April 6, 2014 through October 31, 2014 petitioner's earned income was not budgeted correctly when determining her eligibility for child care funds.
4. By notice dated March 13, 2015 the agency informed petitioner that she was overpaid \$2033.20 (claim # [REDACTED]) in child care because of client error in not reporting the earned income.

DISCUSSION

County, tribal and W-2 agencies are responsible for preventing and correcting improper child care payments, establishing and collecting overpayments, and determining which clients and providers shall be referred for overpayment to the fraud investigation provider, and/or to the District Attorney's office for criminal prosecution. These responsibilities encompass eligibility, authorizations, attendance reporting, and all other activities related to the expenditure of Wisconsin Shares benefits.

Wisconsin Statute §49.195(3), requires the agencies to try to recover all overpayments made under Wis. Stat. §49.155, the statute authorizing subsidized child care, regardless of who was at fault. See Wis. Stat. § 49.195(3). The agencies must determine whether an overpayment has been made and, if so, the amount of the overpayment and take all reasonable steps necessary to recover the overpayment. Wis. Stat. §49.195(3); Wis. Admin. Code §DCF 101.23(2); See also, *Wisconsin Shares Child Care Assistance Manual* (WSCCA Manual), Ch. 2., available online at http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter_2/chapter2client.pdf.

In this case, the agency established the overpayment at issue because petitioner's earned income had not been reported when her income went above the eligibility level for her household. The maximum income for any family to remain eligible for Wisconsin Shares child care assistance is 200% FPL. See *WSCCA Manual*, §1.6.3. 200% of the FPL for a household of 2 is \$2,622. In reviewing the evidence, I can find no error in the corrected income it used for petitioner. The income amounts for the time periods at issue put her over the 200% FPL gross income limit. See Exhibit 1.

Petitioner did not dispute the income calculations, but rather, testified that she did not do this intentionally. Intent is not relevant to this case. The agency was not trying to prove that she intentionally failed to report the increase in income. Child care policy states that parents receiving Wisconsin Shares child care assistance must report any changes in circumstances that may affect their eligibility to the child care administrative agency within 10 days after the change. See *WSCCA Manual*, §§1.15.1 – 1.15.2. And, the benefits can be recovered regardless of fault. Thus, even if the agency had failed to budget income that she had reported correctly, the authorizing statute does not care who made the error. See Wis. Stat. §49.195(3).

I must uphold the agency's determination. While petitioner may find my decision unfair, administrative law judges do not have the power to address issues of fairness. We are required to apply the law as written. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977).

CONCLUSIONS OF LAW

The agency has established an overpayment of \$2033.20 (claim # [REDACTED]) of child care funds against the petitioner because petitioner was over the income limit.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of August, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 5, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud